

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

JANICE HARGROVE WARREN

PLAINTIFF

v.

No. 4:19-cv-00655-BSM

CHARLES MCNULTY, et al.

DEFENDANTS

**MOTION TO STRIKE PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

Defendants, by their attorneys, Bequette, Billingsley & Kees, P.A., for their Motion to Strike Plaintiff’s Response, Brief in Support and Response to Statement of Undisputed Facts to Defendants’ Motion for Summary Judgment and Brief in Support, allege and state:

1. On August 12, 2020, Defendants filed a Motion for Summary Judgment, Brief in Support, and Statement of Undisputed Facts. Dkt. Nos. 27-29. The filings were timely.
2. Under Local Rule 7.2, Plaintiff’s response to the same was due August 26, 2020.
3. On August 25, 2020, Plaintiff filed a motion for extension of time to respond to Defendants’ Motion for Summary Judgment, which was not opposed by Defendants. Dkt. No. 34.
4. On August 25, 2020, the Court entered an Order allowing Plaintiff to file her response by September 9, 2020. Dkt. No. 35.
5. Plaintiff filed her response and supporting exhibits and brief beginning at 12:01 a.m. on September 10, 2020 and ending at 2:00 a.m. on September 10, 2020. Plaintiff’s filing was untimely.
6. On Friday, September 11, 2020, Plaintiff refiled her response, supporting exhibits and brief. Dkt. Nos. 40-43. By then, Plaintiff’s response was three (3) days late.

7. Plaintiff represented to the Court that her filings of September 11, 2020 were to correct “two technical filing errors” and requested that her filings be substituted. Dkt. No. 41. This representation to the Court was false.

8. Plaintiff’s response brief of September 11, 2020 (Dkt. No. 42) included new exhibits that were not in the initial filing. The new brief also contained new arguments.

9. A comparison of Plaintiff’s initial response brief (Dkt. No. 36-1) and the one filed on September 11, 2020 (Dkt. No. 42) show multiple changes. *See* Comparison, attached to this Motion as Exhibit 1.

10. Plaintiff not only filed her response late, refiled it days later, still late, but misrepresented to the Court that her late filing was due to “technical filing errors,” when that was not the case. Plaintiff’s refile of her response and supporting brief on September 11, 2020, was done for the purpose of correcting typographical errors, adding exhibits, and adding argument, as can be seen from the Comparison, Ex. 1.

11. In all of this, Plaintiff never requested an extension of time in which to file her Response late or to substitute her brief in order to make substantial changes.

12. Accordingly, Plaintiff’s response is untimely, includes misrepresentations to the Court regarding the filing and should be stricken by this Court. *See United States v. Ouachita Gravel Company, Inc.*, 2019 WL 5309118, at *3 (W.D. Ark. October 21, 2019) (slip opinion) (quoting *Reasonover v. St. Louis County, Mo.*, 447 F.3d 569, 64 Fed. R. Serv. 3d 1122 (8th Cir. 2006)).

WHEREFORE, Defendants respectfully pray that this Court grant their Motion to Strike Plaintiff’s Response to Defendants’ Motion for Summary Judgment and Brief in Support, strike Plaintiff’s Response to Defendants’ Motion for Summary Judgment and grant Defendants’ Motion

for Summary Judgment; and for all other just and proper relief to which Defendants may be entitled.

Respectfully submitted,

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